

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

THEODORE VISNER and KATHY SMITH,

Plaintiffs,

Case No. 15-cv-12899

v.

Honorable Thomas L. Ludington

BANK OF AMERICA, et al.,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING MOTION FOR  
TEMPORARY RESTRAINING ORDER WITHOUT PREJUDICE, AND DISMISSING  
CASE WITHOUT PREJUDICE**

On August 13, 2015, Plaintiffs Theodore Visner and Kathy Smith filed a Request for a Temporary Restraining Order. *See* Pls.' Mot. for TRO, ECF No. 1. Plaintiffs filed the August 13, 2015 Request on the miscellaneous docket and paid the \$46.00 miscellaneous case filing fee. Because Plaintiffs' filing—a motion for a temporary restraining order and motion to recuse—sought adversarial relief, it was moved to the civil docket. *See* Order Transferring Case, ECF No. 2. When the case was moved to the civil docket, Plaintiffs were required to meet civil filing requirements. This includes a higher filing fee than that required by the miscellaneous docket. Plaintiffs did not satisfy the civil case filing fee or file an application to proceed in forma pauperis.

On September 23, 2015, Magistrate Judge Patricia T. Morris issued a report recommending Plaintiffs' case be dismissed without prejudice for failure to pay the civil case filing fee or file a proper, meritorious application to proceed in forma pauperis. *See* Rep. & Rec., ECF No. 6. Plaintiffs were given one extension to either object to Judge Morris' Report or

comply with the Court's civil case filing fee requirements by either paying the fee or filing a proper, meritorious application to proceed in forma pauperis. *See* Order Granting Extension, ECF No. 9. Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation of the Report, Plaintiffs have not objected to Judge Morris' Report or complied with the civil case filing fee requirement. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 6, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's Motion for a Temporary Restraining Order, ECF No. 1, is **DENIED without prejudice**.

It is further **ORDERED** that Case No. 15-cv-12899, is **DISMISSED without prejudice**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: November 19, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 19, 2015.

s/Michael A. Sian  
MICHAEL A. SIAN, Case Manager